IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2806 OF 2005

Smt. Halima Abdul Ahad Shaikh]
an adult, Occ: Household, Age 35]
resident of Room No.4, "C" Block]
4th floor, 80, Kalyan Building]
P.B. Road, Mumbai 400 007]..Petitioner

versus

1. Shri A. N. Roy]
Commissioner of Police,]
Brihan mumbai]
2. The State of Maharashtra]
3. The Superintendent of Jail,]
Nashik Road Central Prison]
Nasik Road]
4. The Superintendent of Jail]
Thane Central Prison, Thane]
5. The Secretary,]
Advisory Board (MPDA)]
Mantralaya, Mumbai]..Respondents

Mrs. A. M. Z. Ansari for the Petitioner.

Mrs. A. S. Pai, APP for the Respondents - State.

CORAM : D. G. DESHPANDE, &
S. A. BOBDE,JJ.

DATE : 19TH JULY, 2006

ORAL JUDGMENT : (Per D. G. Deshpande, J.)

1. Heard learned counsel for the petitioner and learned APP for the State.

2. This petition challenging the detention order has been filed by the mother of the detenu. The name of the detenu is Asif Abdul Ahad Shaikh. The Order is dated 30.7.2005. It is a detention under The Maharashtra Prevention of Dangerous Activities of Slumlords, Bottleggers, Drug Offenders And Dangerous Persons Act, 1981. The detention has been challenged on many grounds in the petition.

3. Since, we were satisfied with the first ground raised by Mrs. Ansari, she did not argue other points / grounds. The ground that was raised by Mrs. Ansari was that the activities of the detenu so far as it related to the facts of C.R. No. 114 of 2005 under Section 504 and 114 of the IPC and the in-camera statements of witnesses 'A' and 'B' did not affect public order at all. She contended that it may be a case of law and order but not a case of public order.

4. In support of the contention, she drew our attention to the grounds of detention from paragraph 5 onwards. In short, what is stated against the detenu in respect of C.R. No. 114 of 2005 is that complainant Shaikh Imran Abdul Kadir and the detenu

reside in the same building. The associates of the detenu, viz. Ahamad Abdul Malik and Fajal Abdul Malik also reside in the said building. Two years before there was a quarrel between the detenu and one Smt. Firoza Tahir Shaikh, over children. Therefore there was enmity of the detenu with the aunt of the complainant.

5. Regarding the incident, it is stated that on 24.6.2005 at about 12 hours in the afternoon the complainant was on his way towards his house for lunch and he came near Kalyan Building, that is, the building where he was staying. When the complainant reached near the gate of the building, he saw detenu and his two associates, named above. Then, detenu started abusing the complainant in filthy language. The detenu was armed with iron rod and he started assaulting the complainant with the stump on his head. The associate of the detenu Ahamad Abdul Malik had a stump and he also assaulted the complainant. When one Naved Suleman Shaikh, a relative of the complainant intervened , he was assaulted by means of belt on his back by another associate of the detenu Fajal Malik.

6. On seeing the incident, some of the residents tried to intervene, but it is alleged in paragraph 5(a)(i) that the detenu and his associates pointed out the weapons and threatened those persons, therefore, those residents ran helter and skelter and closed the doors of their houses and shopkeepers closed their shops and consequently complaint came to be lodged against the detenu. In this background of the case, Mrs. Ansari contended that admittedly there was enmity between the complainant and the detenu, and, the so-called enmity was on trifle ground, that is, a quarrel over children two years before. There was no reason for the detenu to assault the complainant on that particular day, and, then she drew our attention to the fact that even before the complainant lodged his complaint, the detenu has lodged complaint against the complainant to the fact that the complainant had assaulted him and his associates and detenu received more serious injuries in that assault. She further contended that in fact it was the complainant who was aggressor and the detenu was on defending side. But apart from that, she contended that nothing is said in paragraph 5 of the grounds of detention that the incident has affected public order. No members

of the public were present, statement that shopkeepers closed the shops and residents ran helter and skelter, is absolutely a concocted statement in order to implicate the detenu. Quarrel between the residents are usual things and in the absence of any material to show that public order was affected by the incident, the Detaining Authority were not justified in detaining the detenu under the aforesaid provisions of the Act.

7. She also drew our attention to statement of witness 'A' in paragraph 5(b)(i), it is stated there that in second week of June, 2005, the witness was purchasing some goods from a shop after parking his motor cycle opposite the building of the detenu. At that time, the detenu and one of his associate came there on motor cycle and dashed the motor cycle of the witness. When the complainant enquired they abused him and and slapped him near the car. The associate is alleged to have questioned the witness why he is taking enmity with the detenu and assaulted the witness. Then witness shouted for help, some persons tried to intervene but at that time the detenu took out a Rampuri Knife and gave threats.

8. Witness 'B' in her statement dated 6.7.2005 has stated that in the third week of June 2005 she was returning from work at about 18.00 hours, she saw detenu along with one of his associate. Detenu passed some indecent marks and started following her. She was frightened and she entered in a nearby shop. The detenu and his associate followed her, the detenu caught hold of her hand and tried to misbehave with her. The witness shouted but nobody dared to stop him. When passers-by gathered the detenu and associate of the detenu threatened.

9. Mrs. Ansari contended that at any rate the first incident on the basis of which, C.R. No. 114 of 2005 was registered, clearly shows that no public order was affected by the acts of the detenu, and, therefore, the detention order was liable to be quashed.

10. The learned APP on the other hand contended that the detenu is a known gunda, people are frightened of him and when the incident took place near Kalyan Building (about C.R. No. 114 of 2005) it was open space, that is, on the road, and,

therefore it has to be presumed that public order was affected. We are not at all in agreement with this submission. Admittedly, and as observed above, there is an enmity between the detenu and the complainant. In the "Marpit" that took place near the building, no outsider was involved, three persons from detenu's side and three persons of complainant had disturbed law and order, and, not at all affected the public order. No members of the public were present. There is nothing to show in that regard and therefore on this ground, the objection raised by Mrs. Ansari is upheld, and, we pass the following order:

ORDER

. Petition is allowed. Rule is made absolute. Detenu be released forthwith, if not required in any other case.

(D.G. DESHPANDE, J.)

(S.A. BOBDE, J.)